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UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON (EUGENE)

In re:

Heidi Angelique Bittick and
Richard Lee Bittick,

Debtors.

BK Case No.: 20-61935-dwh13

Chapter: 13

OBJECTION TO CONFIRMATION OF PLAN

SUBJECT PROPERTY

309 SE Walnut Ave
Dallas, OR 97338

Quicken Loans, LLC (“Secured Creditor” collectively) hereby objects to the confirmation of the Chapter 13 Plan (“Plan”) filed by Heidi Angelique Bittick and Richard Lee Bittick (“Debtors”).

I. STATEMENT OF FACTS

1. On August 14, 2020, Debtors filed the instant voluntary petition under Chapter 13 of the Bankruptcy Code as Case No. 20-61935-dwh13.
2. Secured Creditor is the current holder of a promissory note dated August 26, 2015, executed by Debtors (“Borrowers”) in the principal amount of \$200,800.00, and made payable to Quicken Loans Inc. (“Note”). The maturity date is September 1, 2045, at which time all outstanding amounts are due and payable. The Note provides that, in the event of default, the



holder of the Note has the option of declaring all unpaid sums immediately due and payable. Creditor is in possession of the Note, endorsed in blank, and is entitled to enforce the instrument.

3. The Note is secured by a Deed of Trust (the “Deed of Trust”), executed by the Borrowers, and encumbering the real property located at 309 SE Walnut Ave, Dallas, OR 97338 (“Property”). The Deed of Trust reflects that it was recorded on or about September 2, 2015 in the Office of the Polk County Recorder as Instrument No. 2015-009601. Secured Creditor is the assignee and/or successor in interest to the Deed of Trust by means of an assignment.

4. The Property is Debtors’ primary residence (Dkt. 1, Petition, Part 1, ¶ 5).

5. On the date of filing, the obligation under the Note was contractually in default due to the Debtors’ failure to make the installment payment due and owing since March 1, 2020 and all installment payments due thereafter. As of the petition date, the approximate amount of Creditor’s prepetition arrearage claim is \$10,405.27.

6. On August 14, 2020, the Debtors filed a Chapter 13 plan as Docket No. 6 (“Plan”). The Plan proposes to only pay Creditor \$0.00

II. ARGUMENTS

Secured Creditor objects to the Plan to the extent it attempts to avoid, value or cramdown Secured Creditor’s lien. Secured Creditor believes this Plan cannot be confirmed as more fully detailed below. The Plan fails to provide for cure the cure of arrears on Secured Creditor’s claim.

LACK OF ADEQUATE FUNDING (11 U.S.C. § 1325(a)(5)(B)(ii))

The Plan is not adequately funded. The Property is Debtors’ primary residence. 11 U.S.C. § 1325(a)(5)(B)(ii) requires full payment of the allowed claim of Secured Creditor. Debtors’ Plan fails to provide for Secured Creditor’s pre-petition arrearages. This failure to pay pre-petition arrears also acts as an impermissible reduction of Secured Creditor’s lien by forcing implementation of a proposed loan modification through the Plan. Debtors’ proposed treatment of

Secured Creditor's claim therefore cannot allow for confirmation of the Plan under *In re Lam*, 211 B.R. 36 (9th Cir.BAP 1997) and *In re Nobleman v. American Savings Bank*, 508 U.S. 324 (1993).

Under 11 U.S.C. § 1325(a)(5) the Court shall confirm a Plan only if as to each secured claim the claim holder accepts the Plan and the Plan provides for distribution to that creditor in an amount not less than the value of the allowed secured claim. The Plan does not provide for payment of Secured Creditor's secured claim, appears to improperly avoid the lien, and Secured Creditor does not accept the Plan. Therefore, the Plan should not be confirmed.

III. CONCLUSION

WHEREFORE, Creditor prays as follows:

1. That confirmation of the proposed Plan be denied; and
2. For such other and further relief as this Court deems proper.

DATED: 09/21/2020

Respectfully submitted,

THE MORTGAGE LAW FIRM, LLC
Attorneys for Secured Creditor,
Quicken Loans, LLC

BY: /s/ Eric Marshack
Eric Marshack, OSB #050166

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CERTIFICATE OF MAILING

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I hereby certify under penalty of perjury under the laws of the State of Oregon that I mailed a true and correct copy of the Objection to Confirmation of Plan postage pre-paid, regular first class mail or via Electronic Message through Electronic Case Filing on 09/21/2020 to the parties listed on the attached exhibit.

DATED: 09/21/2020

/s/ Eric Marshack
Attorney – Eric Marshack

Debtors – via U.S. Mail

Heidi Angelique Bittick
Richard Lee Bittick
309 SE Walnut Ave
Dallas, OR 97338

Chapter 13 Trustee – via CM/ECF

Naliko Markel
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US Trustee – via CM/ECF

US Trustee, Eugene
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